

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF LOUISIANA  
3 SHREVEPORT DIVISION

4 UNITED STATES OF AMERICA : CRIMINAL DOCKET  
5 : No. 11-CR-00062-21  
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1 01 SEPTEMBER 2011,

2 (Court called to order 2:45 p.m.)

3 THE COURT: Thank you. Be seated please.

4 Let's see. Mr. Karns and Mr. Cuff, if you'll come up to  
5 this corner mic here.

6 Good afternoon, Mr. Walker.

7 MR. WALKER: Good afternoon, Your Honor. We are here  
8 in 11-CR-00062, and he is number 21; *United States versus*  
9 *Robert Cuff*, a/k/a DD0040, a/k/a "Slap-a-lot". We are here for  
10 an initial appearance, arraignment, and detention hearing.

11 THE COURT: All right. Good afternoon, Mr. Karns.

12 MR. KARNs: Good afternoon, sir.

13 THE COURT: Mr. Karns, are you making an oral motion  
14 to enroll as retained counsel, or have we already taken care of  
15 that on paper before today?

16 MR. KARNs: We've already taken care of it, sir.

17 THE COURT: All right. Very well.

18 Sir, are you Robert E. Cuff?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Let's see. Mr. Karns, what I  
21 would normally do for a defendant making his initial appearance  
22 and arraignment here who was here with appointed counsel, I  
23 would go over constitutional rights. Do you wish to waive  
24 that?

25 MR. KARNs: Yes, sir.

1           THE COURT: All right. Let's go on then to the issue  
2 of the arraignment. I trust you've been provided with a copy  
3 of the indictment?

4           MR. KARNS: Yes, sir.

5           THE COURT: Are you willing to waive the reading of  
6 it?

7           MR. KARNS: Yes, sir.

8           THE COURT: And how does Mr. Cuff plead?

9           MR. KARNS: Not guilty.

10          THE COURT: All right. Mr. Cuff, I'm entering your  
11 not guilty plea to all of the charges against you in this  
12 federal case.

13          Mr. Karns, as we discussed previously in my chambers, I'm  
14 going to grant your oral motion for Rule 16 discovery, as well  
15 as the Government's right to reciprocal Rule 16 discovery. You  
16 need not, in our court, file written discovery motions in order  
17 to get the basic discovery. It is my belief that the U.S.  
18 Attorney is producing very timely for all of the defendants who  
19 appear, quite a quantity of discovery materials, and I trust  
20 that'll be sufficient. But if there are any problems at all  
21 with discovery as we go forward, all you have to do is call me.  
22 You get Mr. Walker on the phone and I'll resolve any problems  
23 that you have. So before you cut down too many trees with  
24 paper, pick up the phone and I'll help you get to the bottom of  
25 -- you know, if there's something you need or you think is

1 missing, let me know and we'll take care of it.

2 MR. KARNS: Yes, sir.

3 THE COURT: All right. Mr. Cuff, there are 72  
4 defendants in this indictment to date. We've got about 50 or  
5 so in federal custody. What that means is that defendants have  
6 been appearing, as you are today, for many months. And I have  
7 been, for lack of a better word, nursing the case along now for  
8 awhile and setting various deadlines when appropriate. And --  
9 but there are still other defendants to be taken into custody  
10 and to come before the court. Some are being arrested at great  
11 distances from our courthouse. And so what I want to assure  
12 you, and I assured Mr. Karns earlier when we met in my office,  
13 was that there may be times because of the sheer magnitude of  
14 this case and the number of defendants involved, that the case  
15 may at times appear to be moving somewhat slowly. But I am  
16 doing everything I can, and everybody in this court system is  
17 doing everything they can to move it as quickly as we can; but  
18 we have to give due regard for the rights of the defendants who  
19 have not even yet come in. We have to give due regard for Mr.  
20 Karns' need to be fully prepared in order to protect your  
21 interest in the case. So I say that just simply to assure you  
22 that from the court's perspective, we understand the delay and  
23 we're going to do everything we can to move it forward as  
24 quickly as we can.

25 THE DEFENDANT: Yes, sir.

1           THE COURT: All right. One of the deadlines that  
2 I've set, Mr. Cuff, with all the other defendants is: From  
3 time to time, I'll set a status conference and meet with the  
4 lawyers. And the purpose of me doing that is I can make sure  
5 Mr. Karns has received everything he needs, see if he's filed  
6 any motions. If we need to set any hearings, we'll do that.  
7 And if appropriate, we'll set a trial date at that time.

8           But the date that I had already set before you came into  
9 our custody is a status conference date of September 29th at  
10 3:00, September 29th at 3:00. And the clients, the defendants,  
11 will not be at that meeting. It'll just be a meeting that  
12 we'll have just with the lawyers. But I know Mr. Karns will  
13 give you a full report about any dates and deadlines that flow  
14 from that conference.

15           Let's see. Mr. Karns, I believe that takes care of  
16 everything but the issue of the Government's motion for  
17 detention. I have been provided with quite a number of, I  
18 guess I'll call them "letters of reference" that you handed to  
19 me in my office. And I wanted to say that -- on the record  
20 that all of that information will be taken into account in  
21 making the decision on whether Mr. Cuff is eligible for any  
22 kind of bond.

23           And I would ask your permission that even regardless of  
24 the outcome of our proceedings today, I would like to put these  
25 in the possession of the district judge to whom this case is

1 assigned, Judge Hicks, for whatever further use that he would  
2 like to make of it as the case progresses. Is that acceptable?

3 MR. KARNs: Yes, sir.

4 THE COURT: All right. And I'm not going to file  
5 them into the record for confidentiality reasons. You are  
6 welcome to do that if you want. I don't intend to do that, but  
7 I will get them informally into Judge Hicks' possession after  
8 we leave here today. Okay?

9 MR. KARNs: Yes, sir.

10 THE COURT: All right. Anything else, Mr. Karns,  
11 that we need to take up other than the issue of bond or  
12 detention?

13 MR. KARNs: No, sir.

14 THE COURT: Okay. Mr. Walker, anything else before  
15 we move to the detention issue?

16 MR. WALKER: No, Your Honor.

17 THE COURT: All right. Mr. Cuff and Mr. Karns, if  
18 you'll have a seat back at counsels table, I'll ask Mr. Walker  
19 to call his first witness, please.

20 MR. WALKER: Your Honor, before we call our first  
21 witness, the United States would first ask the Court take  
22 notice of the fact that in this case pursuant to Title 18,  
23 United States Code, Section 3142, there is a presumption in  
24 favor of detention as to each of the counts for which -- all  
25 three of the counts for which the defendant is charged.

1           THE COURT: All right. And this defendant is also,  
2 in addition to the two conspiracy charges he has, the Count 1,  
3 he has the enterprise charge?

4           MR. WALKER: That is correct.

5           THE COURT: Okay. All right. So there's a  
6 presumption in favor of detention on each of those because the  
7 offenses, the grand jury found probable cause to charge on  
8 offenses involving a minor victim?

9           MR. WALKER: That is correct. And actually, there is  
10 a presumption in favor of detention on all child pornography  
11 charges with the exception of possession of child pornography.  
12 So distribution, receipt, advertising, and enterprise all carry  
13 a presumption in favor of detention.

14          THE COURT: All right. Thank you, sir. You can call  
15 your witness.

16          MR. WALKER: The United States would also ask that  
17 the Court take judicial notice of the pretrial services report  
18 that has been submitted to all parties.

19          THE COURT: And, Mr. Karns, did you get a chance to  
20 read the report?

21          MR. KARNs: Yes, sir.

22          THE COURT: Okay, all right. It's my -- you see at  
23 the top the -- I don't know if you still have your copy of it,  
24 but the top of it marks that it's confidential and not to be  
25 read by agents and so forth. So I treat them very delicately

1 and I don't admit them into evidence, but you are welcome to  
2 argue and point out to the Court any of the information that --  
3 and I've read it; I've read it very thoroughly -- but you are  
4 -- even though I'm not going to admit it, for confidentiality  
5 concerns, into the record, I'm going to take everything that's  
6 in here into account and you're free to point any of it out to  
7 the Court that you think's appropriate.

8 MR. KARNs: Thank you.

9 THE COURT: All right.

10 MR. WALKER: And with that, I would call Leslie  
11 Williams.

12 THE COURT: All right.

13 LESLIE WILLIAMS, WITNESS FOR THE GOVERNMENT, SWORN

14 DIRECT EXAMINATION

15 BY MR. WALKER:

16 Q Would you tell me your name and your occupation.

17 A Leslie Williams, special agent with Homeland Security  
18 Investigations.

19 Q And in connection with your employment, are you the case  
20 agent on the case that leads us here today for which Robert  
21 Cuff has been indicted?

22 A Yes.

23 Q Does that case relate to a child exploitation enterprise  
24 and Internet bulletin board called Dreamboard?

25 A Yes.



1 Q In January of 2010 did we have occasion to execute a  
2 search warrant and obtain a copy of that Internet bulletin  
3 board?

4 A Yes.

5 Q When we obtained the copy of the bulletin board, were  
6 there IP addresses on the board, or had they been removed?

7 A In January of 2010 they had been removed.

8 Q In January, I'm sorry.

9 And in June of 2010, did we execute a second search  
10 warrant and have IP addresses?

11 A Yes.

12 Q And were we able to identify Mr. Cuff's IP address by  
13 search warrant or by issuing subpoenas to the Internet service  
14 providers?

15 A Yes.

16 Q That's how we connected him to the board?

17 A Correct.

18 Q I next want to talk to you briefly about the board. And I  
19 know the Court has actually e-signed the complaint in this case  
20 and he has also signed search warrants in the past, so he is  
21 aware of the board. But for the record, was this a child  
22 pornography bulletin board that anybody could join or was there  
23 something you had to do in order to be allowed to join the  
24 bulletin board?

25 A It was a private password protected bulletin board.

1 Q And what did one have to do to gain membership?

2 A Audition with child pornography to the satisfaction of the  
3 administrator, who would then grant them access and membership  
4 to the board.

5 THE COURT: He had to do what to the satisfaction of  
6 the administrator?

7 THE WITNESS: You had to apply with child pornography  
8 to the satisfaction of the administrator, and if he liked what  
9 you applied with, he would grant you membership with a password  
10 and login.

11 BY MR. WALKER:

12 Q And after you obtained membership to the board, could you  
13 then stop posting child pornography or did you have to continue  
14 posting?

15 A Every 50 days you had to post child pornography or be  
16 automatically deleted.

17 Q And were there different areas of the board?

18 A Yes.

19 Q Were there some areas of the board where people only  
20 posted images of children posing?

21 A Yes.

22 Q Were there other sections of the board that were egregious  
23 like the PT Vid section of the board?

24 A Yes.

25 Q Okay. And can you tell me generally what the PT Vid

1 section of the board contained?

2 A It stands for "pre-teen" and it was mostly hard core  
3 videos.

4 Q Hard core videos of -- and when you say pre-teens,  
5 children that had not gone through puberty yet?

6 A Correct.

7 Q And typically engaging in sexual acts with adults?

8 A Correct.

9 Q After you obtained this person's -- after you obtained the  
10 IP information that connected Mr. Cuff to Dreamboard, was his  
11 user name on Dreamboard, at least one of them DD0040?

12 A Yes.

13 Q And were you able to find that he had a email address that  
14 had that same name?

15 A That same name was an MSN Hotmail email address that was  
16 used to register for the board?

17 Q And did you have occasion to execute a search warrant on  
18 that Hotmail DD0040 Hotmail account?

19 A I did.

20 Q And when you did that, did you have occasion to -- did you  
21 and other agents have occasion to look at the contents of the  
22 emails associated with that account?

23 A Yes.

24 Q In the email associated with that account, did you find  
25 images of Mr. Cuff, the defendant in this case?

1 A We did.

2 Q Did you find images of his girlfriend and the children  
3 that he was living with?

4 A Yes.

5 Q Did you find notations about Dreamboard?

6 A One email notating Dreamboard.

7 Q Did you also find notations where he had applied to  
8 another child pornography bulletin board?

9 A Yes.

10 Q Did you also find emails where he discussed his  
11 occupation, that is, his occupation in the military?

12 A Yes.

13 Q Based on all of that, were you satisfied that the  
14 defendant in this case was DD0040 on Dreamboard?

15 A Yes. There were also IP's from the ISP provider, MSN,  
16 that came back to Mr. Cuff.

17 Q The same IP's as the ones he used on Dreamboard?

18 A Same IP that was used to log into Dreamboard was used to  
19 log in to the MSN account where all his identifiers were found.

20 Q So we were able to tie him not only with his IP's but also  
21 with his email account, also images he had sent on his email  
22 account, and also notation about Dreamboard?

23 A Correct.

24 Q DD0040 on Dreamboard, did he join that board approximately  
25 March 22, 2009?

1 A Correct.

2 Q Approximately how many posts did he make?

3 A 43.

4 THE COURT: How many?

5 THE WITNESS: 43.

6 THE COURT: All right.

7 BY MR. WALKER:

8 Q And where did he post to, primarily?

9 A The PT Vid section.

10 Q Did you have occasion, at least in the past, to look at  
11 the different types of things he was posting?

12 A Yes.

13 Q Typically, were they images of young children?

14 A Yes.

15 Q And were they engaged in sex acts with adults --

16 A Yes.

17 Q -- adult men.

18 Did we have occasion, did Homeland Security have occasion  
19 to execute a search warrant in connection with his arrest?

20 A Yes.

21 Q And when they executed a search warrant, did they find,  
22 among other things, hard drives?

23 A Yes.

24 Q Has somebody had occasion to look at those hard drives?

25 A Yes.

1 Q And in looking at those hard drives, was child pornography  
2 found on the hard drives?

3 A Yes.

4 Q Which would be consistent with what he was posting on  
5 Dreamboard?

6 A Correct.

7 Q Did you also find child pornography that he had produced?

8 A Yes.

9 Q Did you find a video that he produced with his  
10 girlfriend's five year old daughter?

11 A Yes.

12 Q And can you tell the Court what he was doing with the  
13 child?

14 A He was performing oral sex on her and the child was  
15 performing oral sex on him. He was trying to penetrate her  
16 vaginally. She was -- anything you could possibly think of.

17 Q Did he -- did at one point she express discomfort with  
18 what he was doing?

19 A Yes.

20 THE COURT: And how old was she?

21 THE WITNESS: I believe she's six right now and five  
22 during the time of the video.

23 BY MR. WALKER:

24 Q How were you able to identify that he was the person in  
25 the video?

1 A He was standing in front of the video. As begin to  
2 undress, you could see him -- he was standing behind a bed, so  
3 you could see him from his knees all the way to the top of his  
4 head. There was another time when he was on the bed and he  
5 looked directly at the camera, at the video, as he was going  
6 between her leg -- putting his face between her legs.

7 Q So he was performing oral sex on her?

8 A Yes.

9 Q And you could observe his complete frontal face as he was  
10 engaging in that act with the child?

11 A Complete face.

12 Q When you observed the video, did it appear that this was  
13 the first time that he had engaged in acts with this child?

14 A No.

15 Q And why do you say that?

16 A During the majority of the video, the child looked  
17 comfortable with him. She was in distress a couple of times  
18 when he tried to, looked like he tried to digitally penetrate  
19 her, and then he was trying to penetrate her with his penis;  
20 she seemed uncomfortable. But the rest of the video, she  
21 seemed -- her facial expression seemed comfortable with him,  
22 that she'd been around him quite a bit and had probably been  
23 through this before.

24 Q Did it also appear that she knew how to perform oral sex  
25 on him --

1 A Yes.

2 Q -- as if that had been something that she had done in the  
3 past?

4 A Yes. And he was also verbally instructing her on what to  
5 do throughout the video.

6 Q And does this the video in fact have sound so you can  
7 listen to him talk while he's engaging in these acts?

8 A Yes.

9 MR. WALKER: I would tender the witness, Your Honor.

10 THE COURT: All right. Do you want to take a moment  
11 to visit with counsel before the cross-examination or do you  
12 want to do that after?

13 MR. KARNS: If I could have second to consult with my  
14 client.

15 THE COURT: Sure. Take as much time as you need.

16 MR. WALKER: And, Your Honor, I'm just going to stand  
17 over here so he has some privacy.

18 THE COURT: All right.

19 (Defendant and counsel confer 3:02:05 p.m. to 3:02:58 p.m.)

20 MR. KARNS: Sir, we're prepared to move forward  
21 without the need to see the video.

22 THE COURT: All right.

23 MR. KARNS: May I approach the podium, sir?

24 THE COURT: Yes, please.

25 CROSS-EXAMINATION



1 BY MR. KARNs:

2 Q Ma'am, you made reference to an email address with the  
3 identifier of DD0040; is that right?

4 A Yes.

5 Q What email address is that?

6 A That's the email address that he used to register at the  
7 board.

8 Q Okay. Are you positive that there were images that were  
9 sent using that email address or receiving images using that  
10 email address?

11 A No child pornography in the email. There were like just  
12 snapshots of the little girl and him and his girlfriend. It  
13 was not child pornography.

14 Q Okay. Now with regard to there was a search of his home  
15 or barracks?

16 A Yes.

17 Q As well as a search of his office?

18 A Correct.

19 Q Okay. Were there search warrants for each?

20 A I don't believe there was a search warrant for the office.  
21 I'm not completely sure of that.

22 Q Okay. Now there was no child pornography found in his  
23 home; is that right?

24 A To my knowledge, not sure of that. They're still working  
25 on all of the media at this point.

1 Q Okay. Have you spoken with Mr. Walker about that?

2 A Yes.

3 Q Okay. And have you heard him say that there was no images  
4 of child pornography found on the drive?

5 MR. WALKER: For clarity's sake, Your Honor, I feel  
6 like as a -- in talking to him, I gave him the best information  
7 I had.

8 THE COURT: All right.

9 MR. WALKER: So I actually was not at the scene of  
10 the search either, so I just want to make it clear, based on  
11 the way (inaudible) --

12 MR. KARNS: Sure. No --

13 THE COURT: All right. What I understand is that you  
14 don't know whether there was or not, but as you sit here  
15 today --

16 MR. WALKER: It's my belief.

17 THE COURT: -- it's your belief that there was not.

18 MR. KARNS: Right. And that's what I'm trying to get  
19 at.

20 THE COURT: Okay.

21 THE WITNESS: As of right now they're still going  
22 through all the media. As of right now, that's --

23 BY MR. KARNS:

24 Q Okay. So to be clear, we're not sure if there's any  
25 images of child pornography that were found on hard drives or

1 computers, thumb drives, at his house?

2 A Correct.

3 Q Okay. So there is no evidence of child pornography found  
4 in his house?

5 A As of right now.

6 Q As of right now? Okay.

7 Now, and with regard to his office, where were the drives  
8 found in the office? Is that what you're saying, that there  
9 were drives found at his office that had child pornography on  
10 them?

11 A Correct. I don't know exactly where in the office they  
12 were. I'd have to review the report.

13 Q Do you know what they were found on?

14 A No.

15 Q Okay. Whether it was thumb drive --

16 A It was my understanding it was hard drives, like external  
17 hard drives.

18 Q External hard drives? Okay.

19 And so was there a search warrant to -- are you aware if  
20 the -- when the -- well, the drives were found in his office;  
21 is that correct?

22 A Correct.

23 Q And do you know if they were government hard drives or  
24 they were personal hard drives?

25 A I don't know.

1 Q Do you know if there was a search warrant to search the  
2 hard drives?

3 A Do not know that.

4 Q Now did he make any statements or admissions?

5 A Did not.

6 Q And he did not resist arrest?

7 A No.

8 Q Now, with regard to there's different levels of membership  
9 at Dreamboard; is that right?

10 A Correct.

11 Q There's the -- there's VIP and Super VIP; is that right?

12 A There's member, VIP, Super VIP, Super VIP period, which  
13 are their producers and the administrators.

14 Q Okay. So there's -- all right; so let me make sure that I  
15 understand. There's member, which would be lowest?

16 A Right.

17 Q Okay. And then the second one moving up?

18 A VIP.

19 Q Is VIP?

20 A VIP.

21 Q And then the next one would be Super VIP?

22 A Correct.

23 Q And then the one after that?

24 A Super VIP with a period at the end, and that denotes that  
25 they are producers on the board.

1 Q Okay. And then there's administrators?

2 A Correct.

3 Q Okay. But in terms of the levels of membership -- well, I  
4 mean, is there only one administrator?

5 A There's five.

6 Q What does it mean to be an administrator?

7 A They run the board; they -- there's one main administrator  
8 who dictates who belongs to the board and who doesn't. The  
9 rest of them help manage the board.

10 Q Okay. So it sounds like then there's four levels of  
11 membership, not including the administrator?

12 A Right.

13 Q Okay. So, and he was VIP?

14 A Yes.

15 Q So he would be at the second lowest?

16 A Yes.

17 Q But not a producer?

18 A Correct.

19 Q Okay. And what's the difference between Super VIP and  
20 then Super VIP period? Well, I guess I should distinguish  
21 between -- we know Super VIP period is a producer?

22 A Right.

23 Q Okay. So what's the difference between VIP and Super VIP?

24 A Just a higher level of membership. The more you post, the  
25 higher up you can move in membership.

1           THE COURT: Was it just a numerosity question? It  
2 was purely a volume question, where somebody would graduate to  
3 the next level from VIP to Super VIP, or did it depend on the  
4 nature of the post?

5           THE WITNESS: Based on the intel from the board, just  
6 reading a lot of the admin's rules and what he would say, I've  
7 seen people with hundreds of posts who had not moved up to  
8 Super VIP, and I've seen people with fewer posts who have moved  
9 up. I think he just selectively -- it's not an automatic  
10 thing, once you hit so many posts, you bump up to the next  
11 section. He would choose, pick and choose who would get to go  
12 to the next section.

13           MR. KARNS: Thank you, sir.

14 BY MR. KARNS:

15 Q     Okay. And so you're not sure if there was a search  
16 warrant for the hard drives later confirmed where child  
17 pornography was found?

18 A     Correct.

19 Q     Okay. Is there any other place where there was child  
20 pornography found other than those drives that were found in  
21 his office?

22 A     Not that I know of?

23 Q     Okay. The video that you described before with the girl  
24 that was living at the house, was that found on those drives  
25 that were seized at the office?

1 A Yes.

2 THE COURT: What was the -- when you reviewed that,  
3 did it have a date stamp on it?

4 THE WITNESS: It did not have a date stamp on it, but  
5 the computer forensics agent, however he pulled it from the  
6 hard drive, said that it was made on July 4th of this year.

7 THE COURT: July 4th of this year? All right.

8 MR. KARNS: Thank you, sir. I don't have any other  
9 questions.

10 THE COURT: All right. Mr. Walker?

11 MR. WALKER: I don't have any further questions, Your  
12 Honor.

13 THE COURT: All right. Agent Williams, you can step  
14 down. Thank you, ma'am.

15 Let's see. Mr. Walker is there any other information that  
16 you wish to present to the Court other than what we have  
17 discussed in court today?

18 MR. WALKER: No, Your Honor. That's it.

19 THE COURT: All right. Mr. Karns, would you like to  
20 call any witnesses or present any -- I'll give you a chance to  
21 argue if you would like. Is there any other information or  
22 evidence that you would like to present from the witness stand?

23 MR. KARNS: Not from the witness stand, but, you  
24 know, I have a proffer as far as other --

25 THE COURT: Yeah. Why don't you just come up to the

1 lecturn and we'll do that. And while you're up there, I'll let  
2 you present whatever argument you would like to make as well,  
3 and then I'll have Mr. Walker go next.

4 MR. KARNs: Okay.

5 Thank you, Your Honor. With regard to the presumption --  
6 and the Defense stipulates that the presumption applies in this  
7 case; however, it is a presumption that can be rebutted. And  
8 that's what's happened here today. I would like -- there's a  
9 lot of the information I want to make in terms of the proffer.  
10 And I assume this is going to make a combination  
11 proffer/argument, Your Honor.

12 THE COURT: Oh sure, sure. Yeah. Would you pull  
13 your mic a little bit closer to you. And I'll turn it down if  
14 need be.

15 MR. KARNs: Yes, sir.

16 THE COURT: All right.

17 CLOSING ARGUMENT

18 BY MR. KARNs:

19 Okay. As far as the presumption goes, it has been  
20 overcome in this case, and now the burden of proof has shifted  
21 to the Government to prove that he's a flight risk or a danger  
22 to the community. And as far as the flight risk standard,  
23 that's by a preponderance of the evidence. And as you know,  
24 for --

25 THE COURT: And I have very little concern about



1 flight risk.

2 MR. KARNES: Okay, sir.

3 THE COURT: I've read enough about his background  
4 where I'm not as concerned. That's not what I'm up here  
5 worrying about right now.

6 MR. KARNES: Yes, sir. So that would leave danger to  
7 the community, which the standard would be "by clearing and  
8 convincing evidence." That this, from this point forward, that  
9 he would be a danger to the community and that the, you know,  
10 the Government obviously has to prove that there are no  
11 conditions or a combination of conditions that can be  
12 reasonably imposed -- excuse me -- that can be imposed and  
13 reasonably assure that Mr. Cuff would not be a danger to the  
14 community. In this case, from this point moving forward, there  
15 are conditions that can be imposed or a combination of  
16 conditions that can be imposed. And pretrial services has  
17 pointed those out as far as, you know, electronic monitoring,  
18 you know, restrictions on travel. In their recommendation,  
19 they talk about, you know, obviously refraining from a firearm,  
20 possession of a firearm, comply with a, you know, curfew. And  
21 this is from pretrial services.

22 THE COURT: I see it.

23 MR. KARNES: -- at Fort -- it was originally conducted  
24 at Fort Bliss. And, you know, they recommended a, you know,  
25 \$20,000 cash bond -- or excuse me -- a cash bond with the

1 required deposit of 10 percent.

2       You know, his character letters, you know, speak to his,  
3 not only long-standing duty performance, but integrity. And  
4 you don't get to the rank and the level of responsibility that  
5 he achieved without having the utmost integrity and  
6 truthfulness and candor towards the leaders that he was in  
7 charge of advising, as well as the troops that he was in charge  
8 of leading.

9       And he is, you know, it's probably pretty rare that you'll  
10 see a case like this, but, you know, since he's -- he's 48 now.  
11 He's had the same job since he was 20 years old. So as far as  
12 consistency with employment, that's 28 years that he has had an  
13 outstanding duty performance.

14       THE COURT: And the letters are full of information  
15 about his traveling overseas and providing assistance in  
16 Somalia and in other far-away places.

17       MR. KARNS: Yes, sir. To some very, you know,  
18 impoverished, you know, peoples and serving as a, you know,  
19 ambassador to our country as well is just outright, you know,  
20 helping people. And so with that consistency, this point  
21 moving forward, I think it's very reasonable to assume and that  
22 the conditions that you can impose or a combination of  
23 conditions that you can impose, would keep the community safe.

24       He's been married to the same woman for 24 years. His son  
25 serves as a Security Forces officer in the Air Force, which is

1 equivalent of a police officer. His daughter is married to a  
2 sailor. You have letters from his daughter as well as his  
3 son-in-law, his wife, in-laws, former colleagues. The rank he  
4 has achieved is the highest enlisted rank that you can achieve  
5 in any military branch, as well as serving in the highest  
6 capacity in that rank as a command, you know, master chief.  
7 The nature of his employment is such that if he doesn't report,  
8 his employer will report him as being AWOL. So it's  
9 essentially a crime for him to not show up to work, whereas,  
10 other accused that may come in here may not get reported by  
11 their employer. His employer will report him if he does not  
12 show up to work, and has the power to issue a warrant for his  
13 arrest.

14 He has a motive to not get in trouble any more. By being  
15 retirement eligible, he's retirement eligible at 20, but his  
16 retirement is not vested. So any misconduct that he would  
17 engage in, whether it be the conduct that he's accused of here  
18 or any conduct moving forward, could cause him and his wife to  
19 loose, you know, his or their retirement. So, he has every  
20 incentive to be on his best behavior if he's released, because  
21 even if he were to be found guilty or plead guilty in this case  
22 and get confinement, prison time, he would be eligible to  
23 receive a check after he gets out. So if he serves, you know,  
24 a number of years in this case, he has something to look  
25 forward to. Assuming that the military gives him his

1 retirement, you know, they don't take his retirement away.

2 THE COURT: Right.

3 MR. KARNS: And that's what he would be shooting for,  
4 you know, by, you know, if he were to be released, that he has  
5 something very important to look forward to because that  
6 retirement's not vested. It's not like he's got a 401(k) plan  
7 that he's allowed to tap into at any given time. That this is  
8 a big question mark that's, you know, something that's hanging  
9 over his head that gives him a big incentive to stay out of  
10 trouble.

11 He obviously has no criminal history. He wasn't on  
12 probation or parole during the time period of this alleged  
13 offense. He's got the, you know, the physical condition and  
14 mental condition, you know, fortitude to do what's right in  
15 terms of, you know, not harming the community, as well as  
16 returning.

17 So, you know, for those reasons, as well as, Your Honor,  
18 it doesn't appear that there is any child pornography, there  
19 has been no child pornography discovered at his house. The  
20 pornography that was discovered on the hard drives, there's no  
21 evidence that there was a search warrant to obtain, to search  
22 his personal hard drives.

23 And so for those reasons, Your Honor, we believe that  
24 there is a combination or conditions or combination of  
25 conditions that would adequately serve to protect the

1 community. Therefore we ask for you to follow the  
2 recommendation in the pretrial services report.

3 THE COURT: All right. Thank you, Mr. Karns.

4 MR. KARNs: Thank you.

5 THE COURT: Mr. Walker?

6 CLOSING ARGUMENT

7 BY MR. WALKER:

8 First, the evidence against the defendant is overwhelming.  
9 The evidence that he was a member of this board is  
10 overwhelming. We have more evidence against this defendant  
11 being a member of this board than we have of anybody else. And  
12 we took it very seriously because of who he was. We have not  
13 only IP information proving it; we've got his -- we went and  
14 got his email address where we've got pictures of him and him  
15 talking about Dreamboard. We also have him not only being a  
16 member of Dreamboard, we have him being a member of Dreamboard  
17 and another child pornography bulletin board at the same time.

18 The Defense talks about candor. I think what is  
19 absolutely clear is that this defendant is living two lives.  
20 He has the life which is his official life, his government  
21 life, and then he has this other life, the life where he's  
22 uploading hard core, pre-pubescent child pornography. He's  
23 uploading videos of children being sexually abused.

24 As you heard, he was uploading to the PT Vid section.  
25 That's the videos of children being sexually abused. And you

1 heard the ages of the children, young children.

2 When they execute the search warrant, what do they find?  
3 They find that he's been actively molesting his girlfriend's  
4 child, and he videotaped it. And you also heard from the agent  
5 that it absolutely appeared it wasn't the first time because he  
6 had been teaching this child how to be a victim over time. She  
7 knew what to do because he'd taught her what to do.

8 THE COURT: Was the video of the girlfriend's  
9 daughter uploaded or was it just on the hard drive?

10 MR. WALKER: We don't know. He uploaded child  
11 pornography onto the computer -- I mean, we can see what he  
12 uploaded on to Dreamboard. The problem is: On Dreamboard, as  
13 the Court well knows, you take individual images out of a  
14 video, and so you can see individual images but you can't see  
15 the video because it's stored some place else. I looked at the  
16 images. I saw images that look like the girl, but I can't say  
17 it's the girl; I can only say it's children that looks like the  
18 girl.

19 So when you look at this person, you're looking at a  
20 person who clearly has had two completely different lives. He  
21 talks about candor. If the general had known or if anybody had  
22 known what he was doing, he would absolutely be out. He talks  
23 about the fact that he's been married 24 years and talking  
24 about candor. He's been married 24 years, but at the time that  
25 this happened, his wife was living in another state, he was

1 living with his girlfriend and molesting her daughter. That  
2 just doesn't sound like candor to me.

3 The Defense also talks -- and this is a disturbing thing  
4 and it's just, I only note it based on everything else that  
5 we've seen in this case. He talks about the fact that there  
6 are letters -- and I haven't read them and it's not the  
7 Defense's fault; it's actually I could have spent more time  
8 reading them. I didn't ask to. But he talks about the fact  
9 that this guy has been traveling to third world countries and  
10 going there apparently repeatedly for a long period of time.

11 That's been a recurring theme in this case. The people  
12 who are producing are traveling to third world countries all  
13 the time. And some of them have sterling records when they  
14 travel to those third world countries and many of them are  
15 doing things to children in those third world countries.

16 You know, the evidence in this case is overwhelming. The  
17 fact, though he's not a producer on the board, he hasn't been  
18 elevated, but he is producing child pornography, puts him in a  
19 completely different category than most of the other people who  
20 have been before this Court. And I think detention is the only  
21 justified decision.

22 THE COURT: All right. Mr. Karns, anything further?

23 REBUTTAL ARGUMENT

24 BY MR. KARNs:

25 Sir, I'd just point out that he is a -- I think the

1 Government clarified it, that he was a member of -- he was a  
2 VIP member, which makes him a non-producer, and so at least the  
3 board -- if you assume that he is a member, a VIP, at least the  
4 board administrator didn't believe that he was a producer. His  
5 image wasn't -- his face wasn't visible in there (inaudible).

6 THE COURT: All right.

7 MR. KARNS: Thank you.

8 THE COURT: The Court has reviewed the pretrial  
9 services report. I'm familiar with the case, as y'all are,  
10 having executed the arrest warrant with the criminal complaint  
11 to it. I've also read the many letters of reference that were  
12 sent from brigadier generals, captains, other command master  
13 chiefs, family members, his wife, his son, his daughter, his  
14 daughter-in-law. And as the evidence was being presented to me  
15 today and the description of the video of Mr. Cuff sexually  
16 abusing the five-year-old, now six-year-old, I couldn't get the  
17 image of Dr. Jekyll and Mr. Hyde out of my head. And Mr.  
18 Walker hit on that when he said the gentleman was leading two  
19 lives.

20 There is absolutely no way that the Court will let Mr.  
21 Cuff out on any kind of bond with any kind of conditions. He  
22 is a child abuser, a child molester, and he records his  
23 criminal acts by video. And there is clear and convincing  
24 evidence of his participation in the conspiracy and in the  
25 enterprise that I have heard summaries of today.



1           The Court finds that the presumption in favor of detention  
2 has not been rebutted, but even setting aside the issue of the  
3 presumption, Court finds by clear and convincing evidence that  
4 the release of Mr. Cuff on any kind of bond or any kind of  
5 conditions would create a gross and unacceptable risk of danger  
6 to the most vulnerable among us in our community. So the  
7 Government's motion for detention is granted.

8           Mr. Karns, I compliment you on the excellent job that you  
9 did for your client. You raised some excellent points. When  
10 the recommendation was made by probation I think in the Western  
11 District of Texas, they didn't have all the information that we  
12 have today and the Court finds itself bound to reject the  
13 recommendation that was made by that pretrial services officer  
14 who did not know what we now know.

15           Mr. Cuff is ordered to the custody of the United States  
16 Marshall pending further proceedings in the case. We've got  
17 future deadlines. I believe that's all we need to take up, so  
18 court is adjourned.

19                           (End of proceedings, 3:24 p.m.)  
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CERTIFICATE

I, Richard A. Simpson, certify that the foregoing pages numbered 1 through 33 do constitute a true and correct transcription from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my ability and understanding.

I certify that the transcript fees and format comply with those prescribed the Court and the Judicial Conference of the United States.

Subscribed and sworn to this 29th day of February, 2012.

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/s/Richard A. Simpson

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